IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4136 of 1990

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANABHAI BABARBHAI PATEL

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 4136 of 1990

MR PRABHAKAR UPADHYAY FOR

MR MUKESH H RATHOD for Petitioner No. 1

MR MANISH UPADHYAY FOR

MR PRASHANT G DESAI for Respondent No. 1-2

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 04/08/2004

ORAL JUDGEMENT

The sole question, which has come to the surface in this petition under Article 226 of the Constitution of India, is, as to whether the petitioner is entitled to the payment of salary or wages during the period of suspension, denied in the Office Order, dated 24.12.1987, by the respondent Corporation, upon the reinstatement after the acquittal recorded by the Sessions Court and upheld by the Hon'ble High Court.

Virtually all facts are admitted. The only dispute is qua the rejection of the request of the petitioner by the Corporation for the payment of full wages or salary during the period of suspension, upon reinstatement followed by the two decisions, acquitting the petitioner from the alleged offences against him. The impugned order at Annexure C, dated 24.12.1987 and the consequential order, after representation of the petitioner, dated 04.4.1989 recorded by the Municipal Corporation clearly provided that the petitioner will not be entitled to full salary for the period of suspension, as the same period will not be considered and treated "as on duty". It is, therefore, clear that the petitioner came to be reinstated, upon full exoneration and acquittal from the criminal case against him, but without treating the period of suspension on duty, entailing non-availability or nonpayment of full salary during that period.

This impugned action of the respondent authorities is directly under challenge. Learned advocates appearing for the parties are heard. The entire factual profile is examined . The relevant proposition of law is also considered and when no any specific provision is shown, under which the right is exercised, and the impugned order and the resultant order, dated 04.4.89, whereby, the petitioner is denied to treat the period of suspension, as on duty, and the resultant non payment of wages. There is no reason why the petitioner should be paid full wages treating the period of suspension as on duty and particularly in view of the following admitted circumstances.

(1) The petitioner has been fully exonerated or acquitted and he has been reinstated.

(2) The period of suspension obviously would be wholly unjustified and the principles of "no work no pay" cannot be pressed into service in such case.

(3) It be noted that this is not the case, where

acquittal is recorded on any benefit of doubt doctrine.

(4) Acquittal is also not recorded because of any technical or procedural lacuna or infirmity in the prosecution.

It is, therefore, in the light of the settled proposition of law, the petitioner shall be entitled to full wages or salary, upon reinstatement and treating that period as on duty. It appears that the authority has misunderstood the principles governing the issue of grant or refusal of the full wages or the salary for the period of suspension upon clean acquittal and resultant reinstatement in the employment. There is no doubt in the mind of this Court that the impugned order, dated 24.12.1987, and the consequential order recorded by the Dy. Municipal Commissioner of respondent Municipal Corporation, dated 04.4.89, is neither legal or rational nor reasonable. No specific grounds are assigned, as to why, even if the outcome of clear acquittal from the criminal case upon reinstatement of the petitioner, Municipal Corporation has not granted all benefits, treating the period of suspension as on duty, without payment of full salary. On the contrary, the reasons which are manifested in the impugned orders are contrary to the settled proposition of law. Wrong reliance is placed in the decision of this Court in the impugned order dated 04.4.89.

After having taken into consideration the entire factual profile and the relevant settings of law, the impugned orders are required to be quashed and set aside, directing the respondent Municipal authorities to treat the period of suspension in the case of the petitioner upon clear acquittal from the criminal case as on duty with full salary and continuity of service without break. The impugned orders are evidently and unambiguously violative of principles of provisions of Articles 14 and 16 of the Constitution of India. The impugned orders are therefore hereby quashed and set aside and the resultant directions to the respondent authority to treat the period of suspension of the petitioner as on duty and resultant full payment of salary or wages and to treat the same period as continuous without any break. The respondent Municipal authorities is directed to comply with this judgment within a period of two months from the date of receipt of a copy of this writ, failing which, it will be open for the petitioner to move this Court for further order or direction.

On behalf of the respondent Corporation, the reliance is

placed on the decision of this Court rendered in the case of Bachubhai Kanjibhai Chauhan Vs. S.B.Tolia ,reported in 1997(3) GLR 2362 is of no avail. The respondent authority as the question of consideration of treating the period of suspension, as on duty, or otherwise depends upon the facts of each case and again on the provisions of relevant rule or regulation, facts in the present case are diametrically opposite and again nothing successfully shown as to which rule or regulation could authorize the respondent authority to deny the benefits, which normally follow, upon clear acquittal. Therefore, the said decision takes respondent authority at no point of return.

The petition shall stands allowed with costs of Rs.500/-. Rule made absolute accordingly.

[J.N.BHATT, J]

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